

APPEAL NO. 021309
FILED JUNE 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was begun on February 15, 2002, and continued to and concluded on April 24, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 16th quarter, and that the compensable injury of _____, does not include an injury to the left knee and low back on and after _____. The claimant appealed, arguing that the hearing officer erred in determining the SIBs and extent-of-injury issues. The respondent (self-insured) filed a response urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the 16th quarter. At the hearing, it was undisputed that the claimant had not returned to work, had not documented a job search during the relevant qualifying period (June 28 through September 26, 2001), and was not enrolled in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). The claimant was basing her entitlement to SIBs for the 16th quarter on an assertion of total inability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)) provides that an injured employee has made a good faith effort to obtain employment commensurate with her ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. The hearing officer determined that the claimant did not participate in a full-time vocational program sponsored by the TRC or by a private provider, that she did not seek employment, and that she had the ability to do sedentary work.

In addition, the claimant asserts that she has an inability to work because she was confined to the use of a walker and her treating doctor recommended that she not work. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Review of the record reflects that the claimant has undergone a functional capacity evaluation (FCE) on four occasions. The March 2, 1999, FCE reflects that the claimant could perform "sedentary" work, the October 20, 2000, FCE reflects that she could perform "sedentary-light" work, and FCEs dated September 17, 2001, and September 19, 2001, reflect that she "did not demonstrate maximal efforts" and refused to complete the tests. The hearing officer's determination that the claimant had an ability to perform sedentary work and that she is not entitled to 16th quarter SIBs is

supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Regarding the extent-of-injury issue, the hearing officer did not err in reaching the complained-of determination. This issue involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations on extent of injury are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT** and the name and address of its registered agent for service of process is

For service in person the address is:

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Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Roy L. Warren
Appeals Judge